



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

November 26, 2012

Nick Toumpas, Commissioner
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-3852

Maggie Bishop, Director
Division for Juvenile Justice Services
Department of Health and Human Services
1056 North River Road
Manchester, NH 03104

Re: New Hampshire Department of Health and Human Services, Division of Juvenile Justice Services (12-OCR-0139) - FINAL

Dear Mr. Toumpas and Ms. Bishop:

In March 2012, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), initiated a compliance review of the New Hampshire Department of Health and Human Services, Division of Juvenile Justice Services (JJS), a State Administering Agency, in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the JJS's compliance with various federal civil rights laws and the Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations or ETR].

On July 24, 2012, the OCR conducted an onsite visit to the JJS to meet with JJS administrative and program staff as well as present a training program on federal civil rights laws that the OCR enforces. The OCR also conducted an onsite visit to one faith-based subrecipient: Life Bridge. The OCR would like to your JJS staff for assisting Attorney-Advisor [REDACTED] during her onsite visit.

The JJS administers DOJ funds from the Office of Juvenile Justice Delinquency Prevention (OJJDP), a component of OJP. Based on the JJS's responses to our Data Request and the information we gathered while onsite, the OCR concludes that the JJS is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we recommend that the JJS: (1) implement written complaint policies and procedures for

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responding to employment and service discrimination complaints against subgrantees; (2) modify and revise its standard assurances by expanding references to applicable federal civil rights laws; (3) add a civil rights component to its established monitoring methods; and (4) develop civil rights training for all of its subgrantees.

On October 15, 2012, the OCR issued a draft Compliance Review Report to the JJS inviting the JJS to provide comments regarding any factual inaccuracies in the Report. The JJS has notified the OCR that it did not have any corrections to the facts stated in the draft Report. The OCR issues this Compliance Review Report as final.

COMPLIANCE REVIEW REPORT

I. Overview

The JJS administers the following DOJ grant programs: Title II formula grants (Title II) and Title V Community Prevention grants (Title V) authorized under the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, as amended (42 U.S.C. § 5672); and the Juvenile Accountability Block Grant (JABG) authorized pursuant to the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. § 3789d(c)(1). The JJS's Title II grants provide funding to nonprofit organizations and the Title V grants provide funding to units of local government. The JJS's uses the JABG block grant funding for staff and services at the JJS's Sununu Youth Services Detention Facility, a facility that houses juveniles between the ages of 13 to 17 within the juvenile justice system.

This Report first examines the JJS's procedures for monitoring whether subgrantees are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the JJS's implementation of the Equal Treatment Regulations (ETR).

A. General Monitoring Procedures to Ensure Subgrantee Compliance with Applicable Federal Civil Rights Laws

Recipients of DOJ federal financial assistance, such as JJS, are responsible for certifying that subgrantees under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the JJS's general efforts to ensure subgrantees' compliance with civil rights obligations, the OCR examined how the JJS used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs; and (4) procedures for receiving, investigating, and resolving complaints alleging employment and services discrimination against subgrantees.

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1. Standard Assurances of Civil Rights Obligations

According to its Data Request Response, Exhibit C of the JJS's contract package entitled *Special Provisions*, outlines applicable financial, legal, and programmatic obligations incumbent upon subgrantees. In reference to the nondiscrimination requirements, the *Special Provisions* contain the following pertinent paragraphs:

16. Civil Rights Compliance: The Contractor¹ shall comply with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and their U.S. Department of Health and Human Services implementing regulations which are found at 45 C.F.R. Parts 80 and 84 respectively.

17 Services to Persons of Limited English Proficiency (LEP): A bilingual staff person or other translator/interpreter will be utilized when providing services or information to an LEP person. Staff will not rely on family members or friends of LEP person to serve as interpreters unless the LEP person expressly requests such an arrangement. Young children will not be asked to translate or interpret. LEP clients will be assigned to bilingual workers if available. If no bilingual worker or in-house interpreter is available, the Contractor will make arrangements to obtain an outside interpreter. An LEP person shall not be required to pay for the services of an interpreter.

During the course of the review, the OCR also found an additional set of terms and conditions in Form Number P-37, *General Provisions*, a contractual agreement outlining legal obligations that the JJS did not provide in its Data Request Response nor could explain upon request. Paragraph 6 of the *General Provisions* of Form Number P-37 states as follows:

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, Contractor shall not discriminate

¹ The JJS uses the term "contractor" rather than subgrantee in referring to entities it awards funding.

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against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sex, handicap, sexual orientation, or national origin, and will take affirmative action to prevent such discrimination.

2. Onsite Visits and Other Monitoring Methods

According to the JJS's Data Request Response and JJS staff with whom the OCR spoke, the JJS's Juvenile Justice Specialist conducts annual onsite visits of all OJJDP subgrantees. The JJS has a written monitoring instrument, a monitoring form entitled *OJJDP Funded Program Monitoring Checklist* used during onsite visits. The JJS's *OJJDP Funded Program Monitoring Checklist* has questions based on the programmatic and fiscal goals of the program as outlined in the subgrantees' proposal. The JJS's *OJJDP Funded Program Monitoring Checklist* does not contain questions that inquire into subgrantees' compliance with federal civil right obligations.

3. Training and Technical Assistance

According to its Data Request Response and JJS staff with whom the OCR spoke, the JJS does not provide any training to subgrantees about federal civil right obligations.

4. Complaint Policies and Procedures

According to its Data Request Response, although not written as a policy, upon receipt of an employment or service discrimination complaint against a subgrantee, the JJS staff would refer the complaint to the Department of Health and Human Services' Ombudsman's Office to conduct an independent investigation of the matter and attempt to resolve the issue through mediation or other alternative dispute resolution methods.

The JJS staff with whom the OCR spoke stated, consistent with the Data Request Response, that staff would refer an employment or service discrimination complaint against a subrecipient to the Department of Health and Human Services' Ombudsman's Office.

B. Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations (ETR) is to ensure that "[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible," 28 C.F.R. Part 38.1(a). The ETRs prohibit the DOJ and JJS from discriminating either for or against an organization based on the organization's religious character or affiliation. *Id.*

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1. Process for Making Awards to Applicant Faith-Based Organizations

The JJS stated in its Data Request Response that in FY 2011 and FY 2012, one Faith-Based Organization (FBO), Life Bridge, applied for and received Title II funding. The grant award is for three years and totals \$315, 842.00.²

In accordance with the Equal Treatment Regulations' directive that no grantmaking agency should discriminate either for or against an organization based on religious character or affiliation, the JJS staff with whom the OCR spoke stated that it treats all grant applicants equally regardless of religious affiliation or character. Given that Title V funding is awarded to units of local government and the Sununu Youth Services Detention Facility receives the JJS's JABG funding, religious organizations would be eligible to apply for the JJS's Title II funding. The JJS awards its Title II grants through a competitive process. According to its Data Request Response, all Requests for Proposals (RFPs) for Title II grant opportunities are posted on the State of New Hampshire and the Department of Health and Human Services websites. The JJS staff stated that it does not include specific language referring to 28 C.F.R. Part 38.1 (a) in its Title II grant applications or other contract and award documents.

According to JJS staff with whom the OCR spoke, the JJS does require nonprofit applicants for Title II funding opportunities to obtain federal tax exemption status under 26 U.S.C. § 501(c)(3) pursuant to the JJDPA. *See* 42 U.S.C. § 5672(b)(2012); *see also* 42 U.S.C. § 5603(23).

2. Procedures for Ensuring that Faith-Based Organizations Comply with Applicable Federal Civil Rights Laws

As discussed previously, the JJS does not have separate procedures for monitoring subgrantees' compliance, including faith-based organizations, with federal civil right obligations.

As part of the OCR's onsite visit to the JJS, the OCR visited the faith-based subgrantee, Life Bridge.

Life Bridge is a one-on-one mentoring program that matches trained mentor volunteers with at-risk teenagers throughout rural parts of the state. Life Bridge uses the Title II award to fund a full-time Executive Director position, to partially fund three area directors as it expands the mentoring program from high schools into middle schools, and to establish a mentoring database. Upon inquiry, the Executive Director stated that he does not take religious affiliation into account when hiring regional directors. According to the position descriptions, none of the funded positions include inherently religious tasks or responsibilities as prohibited by the Equal

² The JJS requires all subgrantees of Title II funding to reapply each year of the three year award.

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Treatment Regulations. *See* 28 C.F.R. § 38.1(b)(1).

The Executive Director stated that school guidance counselors identify the program beneficiaries—the student mentees. The Executive Director stated the program is open to all at-risk children regardless of religious belief or practice.

According to the Executive Director, Life Bridge recruits volunteer mentors from local churches and by word-of-mouth. In the Life Bridge’s Mentor Orientation Training manual, it states a “life bridge mentor has a secure biblical identity.” It further states that a mentors character should be “[l]iving a life along-side a student...as we are under the influence of the Holy Spirit” “[s]haring the love of God from a foundation of grace. Being secure in our identity as children of God. Fear based philosophies and judgmental perspectives will shipwreck personal growth.” Upon inquiry from the OCR as to what these statements meant, the Executive Director with whom the OCR spoke stated that these statements mean that volunteer mentors are required to exhibit a character of respect, love, humility, and perseverance in their roles as mentors. He further stated that volunteers are not instructed to proselytize or engage in religious worship with mentees.

The OCR reviewed the Mentor Orientation Manual and it does not state or advise volunteer mentors to engage in worship, religious instruction, or proselytization with student mentees. The OCR further conducted an interview with the Principal at one of the schools that participates in the Life Bridge mentoring program, Kingswood Regional High School. The Principal stated that over the ten years that the school has worked with Life Bridge, he has not encountered Life Bridge’s staff members or volunteers engaging in proselytization and religious instruction while serving as mentors or administrating the mentor program.

The OCR finds that Life Bridge mentoring program does not violate the ETR.

II. Recommendations

A. Develop Comprehensive Complaint Policies and Procedures

The JJS should develop and implement written, comprehensive complaint policies for receiving and responding to service and employment discrimination complaints against subgrantees. The policies should include provisions for notifying employees and beneficiaries of subgrantees of discrimination complaint procedures. The JJS’s complaint policies, should, at a minimum, include the following elements:

- 1) designating a coordinator who will be responsible for overseeing the complaint process;

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- 2) notifying employees, subgrantees, and program beneficiaries of prohibited discrimination in funded programs and activities and the JJS policy and procedures for handling discrimination complaints;
- 3) establishing written procedures for receiving discrimination complaints from employees, clients, customers, or program participants of subgrantees implementing funding from DOJ;
- 4) providing for the referral of each complaint to the appropriate agency for investigation and resolution, such as the Department of Health and Human Services' Ombudsman's Office;
- 5) notifying the complainant that the complainant may also file a complaint with the OCR by submitting a written complaint to the following address: Office for Civil Rights, Office of Justice Programs; U.S. Department of Justice; 810 Seventh Street N.W.; Washington, DC 20531;
- 6) providing for the notification, in writing, to the OCR when the JJS refers a discrimination complaint to another agency or when the JJS investigates the complaint internally; and
- 7) training JJS staff on their responsibility to refer discrimination complaints, or potential discrimination issues to the JJS's complaint coordinator as soon as the alleged discrimination comes to their attention.

The OCR has enclosed sample templates to assist the JJS in revising and drafting comprehensive complaint policies. Information about the applicable laws, complaint forms, and the investigative process may be found at the OCR's website at www.ojp.usdoj.gov/ocr/crc.

B. Update and Revise the Nondiscrimination Provisions in all of its Contractual Agreements

The OCR recommends that the JJS ensure that all DOJ subgrantees agree to standard assurances that accurately reflect their federal civil rights obligations, including their obligations to comply with all applicable civil rights laws that apply to recipients of federal financial assistance. Given that the OCR found inconsistent language regarding federal civil rights obligations in the JJS's contractual agreements, the OCR recommends that the JJS strike the existing language pertaining to federal civil rights obligations. The JJS should replace that language with the following comprehensive language, which would apply to all subgrantees of DOJ funding, regardless of the program or amount of the federal financial assistance at issue:

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Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Exec. Order No. 13279 (equal protection of the laws for faith-based and community organizations); Exec. Order No. 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and neighborhood organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Department of Health and Human Services, Division for Juvenile Justice Services (JJS).

The recipient will provide an Equal Employment Opportunity Plan (EEO) to the Office for Civil Rights, Office of Justice Programs (OCR) and the JJS, if it has received a single award of \$500,000 or more. If the recipient receives \$25,000 or more and has 50 or more employees, it will maintain a current EEO on file and submit an EEO Certification Form to the OCR, certifying that its EEO is on file. For recipients receiving less than \$25,000, or public grantee agencies with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEO Certification Form to the OCR certifying it is not required to submit or maintain an EEO. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEO requirement, but are required to submit a certification form to the OCR to claim the exemption (a copy should also be submitted to the JJS). EEO Certification Forms are available at: <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>:

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency

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(LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, recipient must take reasonable steps to ensure that LEP persons have meaningful access to its programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding LEP obligations can be found at www.lep.gov.

C. Monitoring Methods

As part of its responsibility to monitor the compliance of all subgrantees with applicable federal civil rights law, the JJS should develop a resource for evaluating whether subgrantees are meeting their federal civil rights obligations during the annual onsite visit. The OCR has developed the attached comprehensive federal civil rights compliance checklist to assist the JJS. The JJS may use the checklist as a new tool or incorporate it within an existing monitoring instrument.

D. Training

The JJS should provide mandatory civil rights training for every subgrantee at least once during a grant cycle, whether the JJS staff provides training in person, by way of teleconference, or through other means. The JJS should ensure that subgrantees are aware of their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations; to provide services to LEP individuals; and to provide the OCR with findings of discrimination issued by a federal or state court or federal or state administrative agency based on race, color, religion, national origin, sex, or disability. The OCR has developed an online training program which the JJS may use. The training program is available at: <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. The OCR is also available to provide additional technical assistance to the JJS in developing a training program.

III. Conclusion

Implementing the recommendations set forth in this Report should be a top priority for the JJS given my letter, dated August 1, 2012, to all SAAs. In my letter, I informed SAAs of a new special condition in OJP awards requiring the development of written Methods of Administration (MOA) for ensuring subgrantees comply with federal civil rights laws. Accordingly, upon receipt of this Report, please contact [REDACTED], OCR attorney, at [REDACTED] to establish timelines for implementing the OCR's recommendations. On request, the OCR is

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available to provide technical assistance to the JJS in addressing the concerns discussed in this Report.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process.

Sincerely,

Michael L. Alston
Director

Enclosures

cc: Pamela Sullivan, Juvenile Justice Specialist, Division of Juvenile Justice Services, NH
Department of Health and Humans Services (w/enclosures)